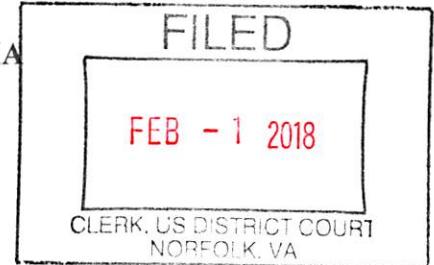


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



TYRONE L. GRIFFIN (#1187551),

Petitioner,

v.

ACTION NO. 2:17cv348

HAROLD W. CLARKE, Director,
Virginia Department of Corrections

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on November 10, 2010, in the Stafford County Circuit Court, for aggravated malicious wounding, participation in a criminal street gang, and possession of a firearm by a convicted felon. As a result of the convictions Petitioner states he was sentenced to serve 43 years in prison, with 25 years suspended, leaving an active total time to serve of 18 years.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed December 20, 2017, recommends dismissal of the petition with prejudice as barred by the federal statute of limitations. (ECF No. 23). Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On December 29, 2017, the court received Respondent's Objection to Factual Error in Magistrate Judge's Report and

Recommendation which identified a factual error in the report. Although it does not change the conclusion or analysis in the Recommendation, the Respondent noted that Griffin's state habeas petition was filed after the state limitations period had expired, but prior to the running of the federal limitations period.¹ (ECF No. 25). The Report and Recommendation incorrectly stated that the state petition was filed after the federal limitations period had expired. On January 12, 2018, the court received Petitioner's objections to the Report and Recommendation. (ECF No. 26).

The court, having reviewed the record and examined the objections filed by the parties to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed December 20, 2017, except to correct the fact that Griffin filed his state habeas petition prior to the running of the federal limitations period, though it was time-barred under state law. It is, therefore, ORDERED that Respondent's Motion to Dismiss be GRANTED and the Petitioner's petition be DENIED and DISMISSED with prejudice.

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

¹Though his state petition was filed before the running of the federal limitations period, it was eventually dismissed by the Supreme Court of Virginia as time barred. A late filed state habeas petition is not "properly filed" and does not toll the limitations period. See Vroman v. Brigano, 346 F.3d 598, 602 (6th Cir. 2003). Griffin's petition would still be time-barred. He filed his federal petition on June 16, 2017, over three years after the deadline of January 17, 2014. See § 2244(d)(1).

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.



Raymond A. Jackson
United States District Judge
RAYMOND A. JACKSON
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

 January 31, 2018